

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RODRIC PETRECE STANLEY, JR.,

Plaintiff,

v.

ELIZABETH HOLLANDBERRY, et al.,

Defendants.

Case No. [22-cv-09129-JD](#)

**ORDER REOPENING CASE AND RE
SERVICE**

Re: Dkt. No. 10

Plaintiff, a detainee, filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend, and the case was dismissed without prejudice when plaintiff failed to file an amended complaint. Plaintiff has filed an amended complaint and seeks to reopen the case.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to

relief” requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

LEGAL CLAIMS

Plaintiff states that his medical needs were not properly addressed by jail staff, his rights under the Americans with Disabilities Act were violated and he was subjected to retaliation. A claim for a violation of a pretrial detainee’s right to adequate medical care arises under the Fourteenth Amendment rather than the Eighth Amendment. *See Gordon v. County of Orange*, 888 F.3d 1118, 1122 & n.4 (9th Cir. 2018); *see also J. K. J. v. City of San Diego*, 17 F.4th 1247, 1256 (9th Cir. 2021). The claim is evaluated under an objective deliberate indifference standard.

[T]he elements of a pretrial detainee’s medical care claim against an individual defendant under the due process clause of the Fourteenth Amendment are: (i) the defendant made an intentional decision with respect to the conditions under which the plaintiff was confined; (ii) those conditions put the plaintiff at substantial risk of suffering serious harm; (iii) the defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant’s conduct obvious; and (iv) by not taking such measures, the defendant caused the plaintiff’s injuries.

Gordon, 888 F.3d at 1125. For the third element, the defendant’s conduct must be objectively unreasonable – “a test that will necessarily turn[] on the facts and circumstances of each particular care.” *Id.* (citations and internal quotation marks omitted). The four-part test articulated in

Gordon requires the plaintiff to prove more than negligence, but less than subjective intent – something akin to reckless disregard. *Id.* Objective unreasonableness is assessed ““from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight.”” *J. K. J.*, 17 F.4th at 1257 (citing to *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)) (finding that officer’s failure to recognize that arrestee was suffering from drug overdose was not unreasonable where arrestee offered alternative explanations for her pain and vomiting and denied that she had ingested anything).

“Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted). *Accord Pratt v. Rowland*, 65 F.3d 802, 806 (9th Cir. 1995) (prisoner suing prison officials under § 1983 for retaliation must allege that he was retaliated against for exercising his constitutional rights and that the retaliatory action did not advance legitimate penological goals, such as preserving institutional order and discipline).

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (“ADA”), provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132.

Plaintiff states that defendant Dr. Hollandberry denied him a cane, egg crates and a medical mattress despite being aware of his injuries. Plaintiff was forced to sleep on a thin mattress and walk long distances without a cane. Defendant also declined to increase plaintiff’s pain medication. Plaintiff alleges that he was denied a disability shower and cell and was unable to bathe as a result.

Defendant Sergeant Kellogg retaliated against plaintiff by keeping him in solitary confinement and taking his medical equipment, due to plaintiff filing grievances. Plaintiff also contends defendant Kellogg’s actions violated the ADA and denied him proper medical treatment.

Plaintiff seeks money damages and injunctive relief. Liberally construed, plaintiff states a claim for denial of medical care and violation of the ADA by both defendants and retaliation by Kellogg.

CONCLUSION

1. The motion to reopen and amend (Dkt. No. 10) is granted and the case is reopened. The Clerk will issue a summons and the United States Marshal will serve, without prepayment of fees, copies of the amended complaint (Dkt. No. 10) with attachments and copies of this order on the following defendants: Dr. Elizabeth Hollandberry and Sergeant Kellogg at Martinez Detention Facility and Contra Costa County Sheriff David Livingston.

2. To expedite the resolution of this case, the Court orders as follows:

a. No later than fifty-six days from the date of service, defendants will file a motion for summary judgment or other dispositive motion. The motion will be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56, and will include as exhibits all records and incident reports stemming from the events at issue. If defendant is of the opinion that this case cannot be resolved by summary judgment, he will so inform the Court prior to the date his summary judgment motion is due. All papers filed with the Court will be promptly served on the plaintiff.

b. At the time the dispositive motion is served, defendants will also serve, on a separate paper, the appropriate notice or notices required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012) (*Rand* and *Wyatt* notices must be given at the time motion for summary judgment or motion to dismiss for nonexhaustion is filed, not earlier); *Rand* at 960 (separate paper requirement).

c. Plaintiff's opposition to the dispositive motion, if any, will be filed with the Court and served upon defendants no later than twenty-eight days from the date the motion was served upon him. Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

1 If defendants file a motion for summary judgment claiming that plaintiff failed to exhaust
2 his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff should take
3 note of the attached page headed “NOTICE -- WARNING (EXHAUSTION),” which is provided
4 to him as required by *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n. 4 (9th Cir. 2003).

5 d. If defendants wish to file a reply brief, they shall do so no later than
6 fourteen days after the opposition is served upon him.

7 e. The motion shall be deemed submitted as of the date the reply brief is due.
8 No hearing will be held on the motion unless the Court so orders at a later date.

9 3. All communications by plaintiff with the Court must be served on defendants, or
10 defendants’ counsel once counsel has been designated, by mailing a true copy of the document to
11 defendants or defendants’ counsel.

12 4. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
13 No further Court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
14 parties may conduct discovery.

15 5. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court
16 informed of any change of address by filing a separate paper with the clerk headed “Notice of
17 Change of Address.” He also must comply with the Court’s orders in a timely fashion. Failure to
18 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
19 Civil Procedure 41(b).

20 **IT IS SO ORDERED.**

21 Dated: July 17, 2023

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26 JAMES DONATO
27 United States District Judge
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